



# POWERS, PRIVILEGES AND IMMUNITIES OF MEMBER OF PARLIAMENT UNDER INDIAN CONSTITUTION: AN OVERVIEW

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## ABSTRACT

The Constitution of India, 1950 specifically guaranty freedom of speech in parliament, and immunity from legal proceedings to members of either House of parliament and state Legislature in respect of speech and voting as well as publication of any report, paper, votes or proceedings relating to respective legislative bodies. There is an imperative need for precise codification of the exact privileges and immunities granted to the legislative bodies in India.

**KEY WORDS:** Constitution, Parliamentary privileges, Freedom of speech and expression, immunities, power.

### Introduction:

Parliament perform important functions as democratic Institution which broadly fit into three main areas; representation, legislation and overseeing of executive government. To achieve this objective and keep the executive accountable and transparent, parliament possesses certain privileges, power and immunities.

Indian parliament is the Gangotri of our democracy. It represents the will and the aspirations of one billion plus people and is the link between the people and the government. If Gangotri gets polluted, neither Ganga nor any of its tributaries can stay unpolluted. Parliament, like other organs of the government is not sovereign and owes its origin and authority to the Constitution. Parliamentarians must maintain highest standards of democracy. Parliament functions through debate, discussion and not through disruption.<sup>1</sup>

There are certain privileges which are enjoyed by each house of the legislature collectively and by the members thereof individually. These privileges have been given to the legislature and its members with the object to enable them to discharge their duties as representative of the people independently without obstruction with dignity.

### Definition of parliamentary privileges:

The most universally used and accepted definition of parliamentary privilege is found in Erskine May, which defines parliamentary privilege as: "the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by Members of each House individually, without which they cannot discharge their functions, and which exceed those possessed by other bodies or individuals."<sup>2</sup>

The Black's law dictionary defines privilege as, "a special legal right, exemption or immunity granted to a person or a class of persons, an exception to a duty.

Thus Parliamentary Privileges are special rights, immunities and exemptions enjoyed by the two Houses of Parliament, their committees and their members. They are necessary in order to secure the independence and effectiveness of their actions. Without these privileges, the Houses can neither maintain their authority, dignity and honour nor can protect their members from any obstruction in the discharge of their parliamentary responsibilities<sup>3</sup>

### Privileges conferred by the Constitution:

The powers, privileges and immunities of either House of the Indian Parliament and of its Members and committees are laid down in Article 105 of the Constitution. Article 194 deals with the powers, privileges and immunities of the State Legislatures, their Members and their committees.

### Freedom of speech:

The essence of parliamentary democracy is a free and fearless discussion in parliament. For a deliberative body like a House of Parliament, freedom of speech within the house is of utmost significance. To enable member to express themselves freely in the house, it is essential to immunize them from any fear that they can be penalised for anything said by them within the house.<sup>4</sup>

The rule of freedom of speech and debate in parliament was established in Britain in 17th century in the famous case of Sir Johan Eliot.<sup>5</sup> Eliot was convicted by the court of king's Bench for seditious speech made in the House of Commons. The House of Lords reversed this decision on the ground that the words spoken in Parliament should only be judged therein. Finally the Bill of Rights 1688, laid down that the freedom of speech and debates or proceedings in parliament ought not to be impeached or questioned in any court or place outside parliament. A member

may thus say whatever he thinks proper within the House and no action can be brought against him in any court for this.

The same principle is adopted under Indian Constitution under Article 105(1) which provides that subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

### Freedom of publication:

Article 105(2) contains two parts. Part one says that no Member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof. Part two provides that no person shall be liable in respect of the publication by or under the authority of House of Parliament or any report, paper, vote or proceedings.

This Article is examined by the Supreme Court in *Tej Kiran Jain v. N. Sanjeeva Reddy*;<sup>6</sup> it was held that whatever is said in parliament is immune from the jurisdiction of the Courts. In view of this interpretation, the notices of motions, questions, resolutions or reports of the committees are covered by the proceedings. Therefore once it is proved that the parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceedings in any Court. This immunity from the jurisdiction of the courts is complete, because it is the essence of parliamentary democracy that peoples representatives should be free to express themselves without fear of legal consequences.<sup>7</sup>

Very essential issues relating to parliamentary privileges have been decided by the apex court in *P.V. Narsimha Rao v. State*,<sup>8</sup> the Majority decision gave an extensive interpretation and held that ordinary law does not apply to acceptance of bribe by a member of parliament in relation to proceedings in parliament. According to Bharucha, J:

*"A member of parliament shall not be answerable in a court of law for something that has a nexus to his speech or vote in parliament. If a Member of Parliament has, by speech or vote in parliament, committed an offence, he enjoys by reason of Article 105(2) immunity from prosecution therefore. Those who have conspired with the Member of Parliament in the commission of that offence have no such immunity. They can, therefore, be prosecuted for it."*

The majority held that the Members of Parliament who took bribe and voted upon no confidence motion are entitled to the immunity conferred by Article 105(2) and are not answerable in a court of law for the alleged conspiracy and agreement. A Member of Parliament who took bribe but did not vote is not entitled to the protection of Article 105 (2) of the Constitution. He must be prosecuted. Similarly, the bribe givers who are also Member of Parliament or State legislatures are not protected by Article 105 (2). Their acts have no nexus to their speech or vote in parliament. They can, therefore also be prosecuted.

The minority view of Agrawal, J holding inter alia, that granting or conceding immunity for an offence of bribery to Members of Parliament would be repugnant to healthy functioning of parliamentary democracy has come true. The parliament has expelled eleven Members on December 23, 2005 for accepting money for putting question in the respective House.

### Other privileges:

Article 105(3) provided that, the privileges of the House of parliament and its members were to be those which were enjoyed by the member of the House of the Commons in England on January 26, 1950 until defined by parliament by law. In

India, some legislative privileges are expressly mentioned in the Constitution while the others are recognised in the Rules of Procedure and Conduct of Business in Lok Sabha framed under its rule-making power.

**Freedom from arrest:** A member of parliament cannot be arrested or imprisoned on civil proceeding within a period of 40 days before and 40 days after the session of parliament. If a member of a house commits a crime he will be arrested like an ordinary person. It has been held that the privilege does not extend arrest or imprisonment on a criminal charge or for detention under Preventive Detention Act.<sup>10</sup>

**Right to exclude strangers from its proceeding and hold secret sessions:** This right has been used by the House of parliament in England to go into secret session to discuss some important matters. The House of parliament in India enjoy a similar power. However, in Morden times secret sessions are held only on exceptional occasions because the voters must be kept informed of what their representative are doing in the parliament.<sup>11</sup>

**Right to prohibit to publication of its reports and proceedings:** The House of Constitution has the right to prohibit the publication of its reports, debates or other proceedings. In *M.S.M Sharma v. Shri Krishna Sinha*<sup>12</sup> the searchlight published a portion of the speech of Bihar Legislative Assembly which was directed by the speaker of the Bihar Legislative Assembly "to be expunged from the proceeding of the House". A show cause notice was sent to the editor of Searchlight for alleged breach of the privileges of the House. The editor of searchlight filed a petition under Article 32 of the Constitution contending that his fundamental right of speech and expression as well as personal liberty under Article 19 (1) (a) and 21 were violated by the proposed action of the committee of privilege of Bihar Legislative Assembly. In its judgement the Supreme Court of India held that "the right to prohibit the publication of any report of debates and proceedings flow from and necessary corollary of the freedom of speech in the House in United Kingdom and hence the similar power can also be claimed by a legislative assembly in India under Article 194(3) of Constitution." BY applying the principle of harmonious construction the Supreme Court held: "the provision of Article 19(1)(a) being general must yield to Article 194 clause 194 (1) and (3) being special."

On the other hand according to Article 361-A no person shall be liable to any proceedings, civil or criminal, in any Court in respect of the publication of either House of parliament or the legislative Assembly or either House of the state legislature, unless the publication is proved to have been made with malice.

**Right to regulate internal proceeding:** each house of parliament may make rules for regulating its procedure and the conduct of its business subject to the provision of the constitution. Article 122 makes it clear that the validity of any proceedings in parliament cannot be called in question on the ground of any alleged irregularity of procedure and no officer or member of parliament in whom powers are vested by or under this constitution for regulating procedure or the conduct of jurisdiction of any Court in respect of the exercise by him of those powers.<sup>14</sup>

**Right to punish members or outsiders for breach of privileges and contempt of the house:** It is the right of every House of Legislature to punish its members or non-members for contempt or breach of privilege of the house. It has been established in India that a House may punish not only for the present contempt but also for the past contempt.<sup>15</sup>

In 2007, in *Raja Ram Pal v. Hon,ble Speaker, Lok Sabha and others*,<sup>16</sup> (which is infamously named as the cash for Query Scandal ) the Supreme Court of India opined that:

- "As the Constituent Assembly of India did not want to limit powers of parliament, it made the specific reference of the House of Commons in England in Articles 105(3) and 194(3) and implied that the legislative bodies in India are having the powers like House of Commons in England including the power to expel its members.
- Scope of Article 105(3) and 194(3) do not clash with and are consistent with the other provisions relating 'vacancy' and 'disqualification' in article 101, 102 and 103 of the constitution the articles which expressly provide for the termination of membership of the legislative bodies in India.
- Power to expel does not violate the right of a candidate to be in the term of the house for five years. Article 83 (2) of the constitution does not guarantee a candidate "a term of five years in any case or at any cost".
- Article 105 (3) of the Constitution by providing an implied power of expulsion is "itself a valid exception to the right under Article 19(1)(g)".
- Article 122 of the Constitution forbids judicial interference in "irregularity of the procedure." It does not prohibit judicial interference in "illegality or unconstitutionality of the procedure in the House.

In 2010, in *Amarinder Singh v. Special Committee, Punjab Vidhan Sabha*<sup>17</sup> a five judge Constitution Bench of the Supreme Court however, ruled that:

- "The member can also expelled for acts committed by them "outside the four walls of the House "distorting ,obstructing or diluting the integrity legislative functions, E.g. taking or giving bribe in return of asking questions or voting in the house.
- The content of legislative proceedings should not touch on matters which are sub judice.
- The implied power of expulsion by the state legislative assemblies vested in them by Article 194 (3) is not an absolute power; the judiciary can scrutinize the manner of exercise of the power of expulsion."

#### Conclusion:

Article 105 clause (3) and Article 194 clause (4) are enabling provisions for defining the powers, privileges and immunities of each house of the legislature as well as its members and committees. The "other privileges "are not still defined by proper legislation in India but they are incorporated in the Rules of procedure and conduct of business in Lok Sabha and rules of procedure of Rajya Sabha.. The uncertain and abstruse nature of parliamentary privileges in India is aptly described in 2002 by the National Commission to Review the Working of the Constitution. The commission recommends that the time has come to define and delimit privileges deemed necessary for the free and independent functioning of parliament. It should not be necessary to run to the position in the House of Commons every time a question arises as to what kind of legal protection or immunity a member has in relation to his work in the House. Thus it is concluded that there is an overdue period still waiting to define explicitly by legislation the exact nature, scope and range of "other privileges of legislative bodies in India.

#### REFERENCES

1. Pranab Mukherjee, President of India and a former seasoned politician. Dr. K.C. Joshi, the Constitutional law of India. Third edition 2016
2. 6 Erskine May (2004) op. cit., p. 75
3. Dr. Baljit Kaushik Associate professor ,Hindu college Sonapat India, Parliamentary privileges in India : An overview
4. M.P. Jain ,Indian Constitutional Law ,sixth edition .reprint 2012.
5. 3 states Trials ,294.
6. AIR 1970 SC 1573.
7. Dr. K.C. Joshi, The constitutional law of India, Central law publications . Third Edition 2016.
8. (1998) 4 SCC 626, AIR 1998 SC 2120.
9. Dr. K Madhusudhan Rao, Codification of parliamentary privileges in India – some suggestions (2007) 7 SCC(jour)21.
10. Smt. Indira Gandhi v. Raj Narayan AIR 1975 SC 2299.
11. Dr. J.N. Pandey ,Constitutional law of India , Central law Agency 53rd Edition 2016
12. AIR 1959 sc,395.
13. Article 118 of Indian Constitution
14. See Article 208 and 212 make similar provisions with respect to the state legislature.
15. Prof. Narender Kumar , Constitutional law of India , Reprint ,2014 ,Allahabad law Agency .
16. (2007) 3 SCC.184
17. Capt. Amrander Singh v. Punjab legislative Assembly , MANU/SC/0298/2010
18. 1 Report of the National Commission to review the working of the constitution 112 (Universal Law publishing Co. Pvt. Ltd. 2002 )